

CONDITIONAL DISTRIBUTION AGREEMENT

THIS CONDITIONAL DISTRIBUTION AGREEMENT made this 1st day of March, 2002 by and between Frederick A. Terry, Jr. and Beverly Carter, Executors under the Will of Paul Mellon and The Board of Supervisors of Fauquier County, on behalf of its Fauquier County Parks and Recreation Department.

RECITALS

WHEREAS, Frederick A. Terry, Jr. and Beverly Carter are the Executors under the Will of Paul Mellon (hereinafter "the Executors"); and

2. WHEREAS, the Executors are authorized under Article Sixth of the Will of Paul Mellon to distribute funds from the estate of Paul Mellon to charitable organizations which Mr. Mellon supported during his lifetime; and

3. WHEREAS, the Executors are authorized under Article Sixth of the Will of Paul Mellon to make such distribution on such terms and conditions as they in their discretion shall determine; and

4. WHEREAS, the Board of Supervisors of Fauquier County (hereinafter the "Board") has acquired title to an 88.6725 tract of land located on Virginia State Route 55 in the Marshall Magisterial District of Fauquier County; said tract being more particularly described as 7500 John Marshall Highway, PIN 6070-40-3474-000; and

WHEREAS, the Board acquired the aforesaid real property to provide sports fields for the youth of the County and other recreational activities in a park setting serving citizens of all ages residing in Fauquier (hereinafter "the Northern Sports Field Complex and Community Park"); and

WHEREAS, during his lifetime Paul Mellon gave support to the County of Fauquier and its Parks and Recreation Department; and

WHEREAS, the Executors, in accordance with the powers granted them under the Will of Paul Mellon, have determined to distribute to the Parks and Recreation Department of Fauquier County through its Board of Supervisors the sum of Ten Million Dollars (\$10,000,000.00) said funds to be used to develop the Northern Sports Field Complex and Community Park subject to the terms and conditions as are hereinafter set forth; now, therefore,

WITNESSETH

IN CONSIDERATION of the distribution of \$10,000,000.00 from the Estate of Paul Mellon, the Board, on behalf of its Parks and Recreation Department, covenants and agrees that upon receipt of the distribution:

A. *Terms And Conditions Of Distribution.*

1. Within two years of the date of the County's receipt of the donation the Board will develop the Northern Sports Field Complex and Community Park in substantial conformance with its approved Master Plan a copy of which is attached and incorporated herein as Attachment A., provided however the development and installation of the aquatic facility may exceed the two year completion date but should be completed within one year thereafter.
2. The Northern Sports Field Complex and Community Park will be adequately maintained in perpetuity.
3. The Northern Sports Field Complex and Community Park will include an aquatic facility to be funded by a contribution from the County in an amount adequate to build a pool similar to the currently proposed Vint Hill pool (approximately \$1,500,000.00) as shown on Attachment B as Scheme "C" and the community will be responsible for fundraising to generate the additional funding to upgrade the facility to the original aquatic complex designed for Vint Hill Scheme "A" on Attachment B, provided however, should the community not achieve its fundraising goal, its failure shall not be seen as a default of this agreement on the part of the County.

4. That upon completion of the construction of the Northern Sports Field Complex and Community Park, any unexpended portion of the distribution shall be retained for the care, maintenance, operation and perfection of the Northern Sports Field Complex and Community Park, provided, however, that the remaining funds may be used for such other purposes as are approved in writing by the Executors.

B. Obligations Of The Board Subject To Lawful Appropriation Of Funds.

The obligations of the Board of Supervisors of Fauquier County are subject to the lawful appropriation of funds, provided, however, should the Board of Supervisors fail to appropriate the funds necessary to fulfill the terms and conditions contained in Section A above, the Executors may declare a default and proceed under Section C below.

C. Default.

The Executors, upon written notice to the Board of its default and the expiration of a thirty (30) day opportunity to cure such default, shall have all rights and remedies, applicable under the laws of the Commonwealth of Virginia, including the right to recover all unexpended funds distributed from the Estate of Paul Mellon.

D. Waiver.

No waiver of any right or remedy hereunder by the Executors shall be deemed to be a waiver of any other right or remedy or of any subsequent right or remedy of the same kind.

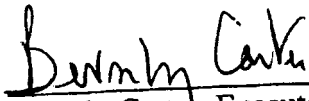
E. Governing Law.

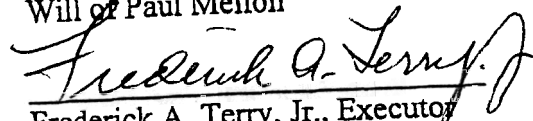
This Agreement shall be governed by the laws of the Commonwealth of Virginia and any action to enforce any right or obligation hereunder shall be subject to the exclusive jurisdiction of the courts of the Commonwealth of Virginia.


IN WITNESS WHEREOF the Executors and the Board of Supervisors have executed and delivered this Agreement as of the date written above.

The Board of Supervisors of
Fauquier County, a body politic

By: 
G. Robert Lee, County Administrator


Beverly Carter, Executor under the
Will of Paul Mellon


Frederick A. Terry, Jr., Executor
under the Will of Paul Mellon

APPROVED AS TO FORM	
<u></u>	<u>2-20-02</u>
COUNTY ATTY.	DATE

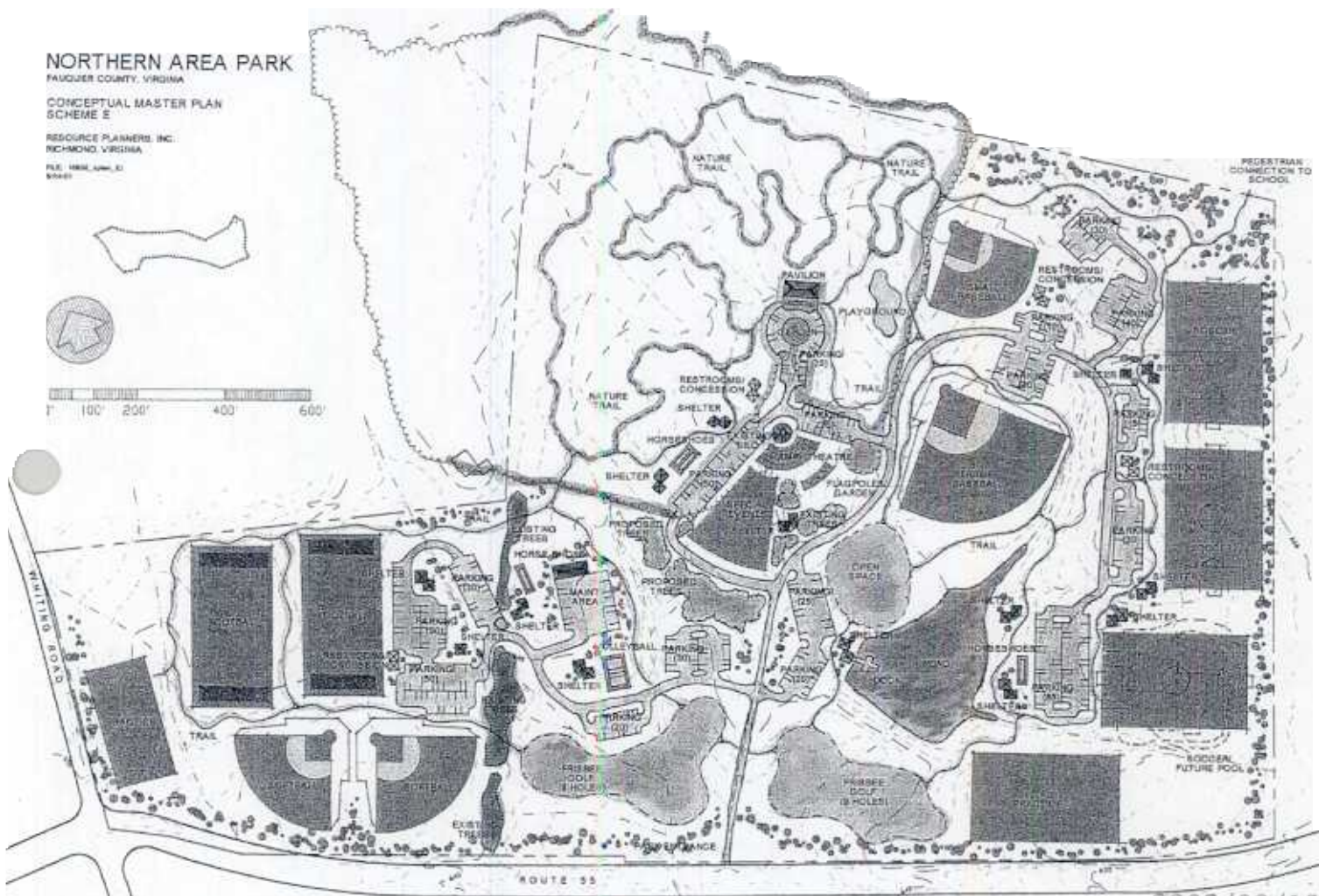
NORTHERN AREA PARK

FAUQUIER COUNTY, VIRGINIA

CONCEPTUAL MASTER PLAN SCHEME E

RESOURCE PLANNERS, INC.
RICHMOND, VIRGINIA

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2002/02/15